

## **EXHIBIT “C”**

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December 26, 2012

**VIA FEDERAL EXPRESS**

IRS Appeals  
Attention: FOIA Appeals  
M/Stop 55202  
5045 East Butler Avenue  
Fresno, California 93727-5136

**FREEDOM OF INFORMATION ACT APPEAL**

Re: Appeal of Freedom of Information Act Denial Dated November 30, 2012,  
Case Number F13285-0027

Dear Sir or Madam:

This is an appeal of the Internal Revenue Service's ("IRS") decision to withhold or otherwise not produce records responsive to our Freedom of Information Act Request dated October 2, 2012 (the "FOIA Request") that was sent to: Internal Revenue Service, FOIA Contact, Stop 211, 23 Chamblee Tucker Road, Chamblee, GA 30341. We requested access to six categories of information contained in IRS and other Federal Government agency records relating to monies collected by the U. S. Treasury in connection with the February 2011 Offshore Voluntary Disclosure Initiative (the "2011 OVDI"), including:

1. All documents that reflect the total amount of dollars received to date as a result of the February 2011 Offshore Voluntary Disclosure Initiative ("2011 OVDI").
2. All documents that reflect how much, in dollars and as a percentage of the totals received, were collected as a result of payments made by participants in the 2011 OVDI pursuant to Title 31, United States Code requirements and/or violations.
3. All documents that reflect how much, in dollars and as a total of the total percentage received, were collected as result of payments made by participants in the 2011 OVDI pursuant to Title 20111 OVDI pursuant to Title 26, United States Code violations, including principal tax due and owing, as well as penalties and interest.
4. All documents that reflect the total amount of dollars collected from participants in the 2011 OVDI that were deposited into the United States Treasury.
5. All documents that reflect the total amount of dollars collected from participants in the 2011 OVDI that were deposited in any other agency or department account, and specifically identify the agency/department and the total amount received by each.
6. Copies of all Form 906 closing agreements executed pursuant to the 2011 OVDI, excising names, addresses, social security numbers and any other information identifying the taxpayer executing said agreement.

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A copy of this Request is attached as Exhibit A.

By letter dated November 30, 2012, signed by Bertrand Tzeng, Disclosure Manager (Acting) of HQ Disclosure Program Operations and FOIA, the IRS denied our request in its entirety. A copy of the denial letter is attached as Exhibit B. The denial letter claims that information responsive to our FOIA Request is exempt from disclosure under FOIA Exemptions 7(A), 7(E) and 3. For the reasons that follow, this position is untenable, and an appropriate search was clearly not performed. We therefore ask the Commissioner to grant the initial request in its entirety.

The IRS denial letter does not explain why Exemptions 7(A) and 7(E) are relevant to the IRS' decision to withhold the requested information and we see no reason why these exemptions apply. The requested information pertains to dollars collected as part of the 2011 OVDI and merely seeks statistical data concerning U. S. tax compliance as to cases that have all been closed. There is, accordingly, no possibility that the requested information could interfere with any ongoing law enforcement proceedings. Similarly, it simply cannot be that the requested information or documents were "compiled for law-enforcement purposes" as what is sought merely reflects payments made by U. S. taxpayers who voluntarily came forward to fulfill U.S. tax compliance obligations. Again, by its very nature, the requested statistical information merely reports the financial results of matters that have been concluded with the U.S. government.

The denial letter indicates that only one page was located in response to Items No. 1 through 5 of the FOIA Request. This is not possible given the extensive and long term nature of the 2011 OVDI program, the more than \$5 Billion from 33,000 voluntary disclosures collected under all OVDI programs, and public statements that have been made by representatives of the IRS. See IRS Announcements and article, attached as Exhibit C. We therefore contend on appeal that the government has not adequately conducted a search for documents that are responsive to our request. Under a FOIA Request, an agency "must show that it made a good faith effort to conduct a search ... using methods which can be reasonably calculated to produce the information requested."<sup>1</sup> Indeed, the former Commissioner of the IRS, Douglas Shulman (who recently resigned from his position) made public statements on a number of occasions concerning certain information relative to the items requested in Items No. 1 through 5. Specifically, the Treasury Department has issued press releases containing public statements by Douglas Shulman concerning the aggregate amount of monies collected in the form of taxes, penalties and interest through various recent offshore voluntary programs, including the 2011 OVDI. The current Acting Commissioner of the IRS, Stephen Miller, has similarly made public statements concerning amounts collected by the IRS through the offshore voluntary disclosure programs during the past four-plus years. These statements were necessarily based on substantial documentation possessed of the IRS. Thus, we believe the IRS' denial of our FOIA request is clearly unsupportable to the extent it indicates that only one page responsive to the items was located. These public pronouncements also negate any claim that the underlying information

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<sup>1</sup> *Oglesby v. U. S. Department of Army*, 920 F.2d 57, 67 (D. C. Cir. 1990).

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either undermines ongoing law enforcement efforts or were compiled solely for law enforcement purposes.

The denial letter also asserts that the disclosure of information responsive to Items No. 1 through 5 of the FOIA Request is exempt under Exemption 3 based on the claim that the disclosure of such information would impair Federal Tax Administration as supported by Internal Revenue Code Section 6103(e)(7). The letter does not in any way explain, however, why the disclosure of information requested would impair Federal Tax Administration thereby enabling the IRS to invoke Exemption 3. Section 6103(a) prohibits the disclosure of tax return and tax return information. Significantly, tax return and tax return information that is confidential and specifically protected from disclosure under Section 6103(a) does not include "data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer."<sup>2</sup> For this reason, FOIA Request Item No. 6 specifically requests Form 906 Closing Agreements (which, as authorized by Section 7121, would generally be considered protected confidential tax return information under Section 6103), but that agreements be provided with the names, addresses, Social Security numbers and any other identifying information concerning the taxpayer redacted or excluded. Because the requested documents specifically provide that any identifying taxpayer information be redacted, such documents are not protected from disclosure on the basis of Section 6103(a).

In the event this appeal is denied, the IRS is required to provide a written response describing the reasons for the denial, names and titles of each person responsible for the denial, and the procedures required to invoke judicial assistance in this matter.<sup>3</sup> Time is of the essence in this matter, and if this appeal is denied or the agency's response is not forthcoming within 20 working days, we reserve our rights under FOIA to seek judicial review, including the Award of attorney's fees. Please address your determination of this appeal to me at the address listed on the letterhead. I await your prompt reply. Thank you.

Sincerely,

Robert F. Katzberg

RFK:ms/jg  
Attachments

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<sup>2</sup> Section 6103(b)

<sup>3</sup> 5 U. S. C. §552(a)(6)(II), 7 C. F. R. § 1.8(d).

# **ATTACHMENT A**

KAPLAN & KATZBERG  
ATTORNEYS AT LAW  
767 THIRD AVENUE  
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NEW YORK, N.Y. 10017  
TEL (212) 750-3100 FAX: (212) 750-8628

October 2, 2012

**VIA FEDERAL EXPRESS**

Internal Revenue Service  
FOIA Contact, Stop 211  
23 Chamblee Tucker Road  
Chamblee, GA 30341

Dear Disclosure Officer:

This is a request pursuant to the Freedom of Information Act, Title 5 United States Code, Section 552 as amended by Public Law 110-175, 121 Stat. 2524 and Public Law 111-83, Section 564, 123 Stat. 2142 and 2184. I request copies of the following documents.

1. All documents that reflect the total amount of dollars received to date as a result of the February 2011 Offshore Voluntary Disclosure Initiative ("2011 OVDI").
2. All documents that reflect how much, in dollars and as a percentage of the total received, were collected as a result of payments made by participants in the 2011 OVDI pursuant to Title 31, United States Code requirements and/or violations.
3. All documents that reflect how much, in dollars and as a percentage of the total received, were collected as a result of payments made by participants in the 2011 OVDI pursuant to Title 26, United States Code violations, including principal tax due and owing, as well as penalties and interest.
4. All documents that reflect the total amount of dollars collected from participants in the 2011 OVDI that were deposited into the United States Treasury.
5. All documents that reflect the total amount of dollars collected from participants in the 2011 OVDI that were deposited in any other agency or department account, and specifically identify the agency/department and the total amount received by each.

Internal Revenue Service  
FOIA Contact  
October 2, 2012  
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6. Copies of all Form 906 closing agreements executed pursuant to the 2011 OVDI, excising names, addresses, social security numbers and any other information identifying the taxpayer executing said agreement.

I do not wish to inspect these documents first. To determine my status for applicability of fees, I am an attorney duly licensed to practice in the State of New York, State Bar number 1553239. I am willing to pay any applicable fees. A photocopy of my attorney's courthouse pass to the United States District Court for the Southern District of New York is attached.

Any questions and all responsive documents or information should be directed to me at the address on the letterhead. Thank you.

Very truly yours,



Robert F. Katzberg

RFK:gj  
Enclosure

## **ATTACHMENT B**





PRIVACY, GOVERNMENTAL  
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224

November 30, 2012

Robert F. Katzberg  
Kaplan & Katzberg  
767 Third Avenue, 26<sup>th</sup> Floor  
New York, NY 10017

Dear Mr. Katzberg:

I am responding to your Freedom of Information Act (FOIA) request dated October 2, 2012, that we received on October 10, 2012.

You asked for the following:

1. All documents that reflect the total amount of dollars received to date as a result of the February 2011 Offshore Voluntary Disclosure Initiative ("2011 OVDI")
2. All documents that reflect how much, in dollars and as a percentage of the total received, were collected as a result of payments made by participants in the 2011 OVDI pursuant to Title 31, USC requirements and/or violations.
3. All documents that reflect how much, in dollars and as a percentage of the total received, were collected as a result of payments made by participants in the 2011 OVDI pursuant to Title 26, USC violations, including principal tax due and owing, as well as penalties and interest.
4. All documents that reflect the total amount of dollars collected from participants in the 2011 OVDI that were deposited into the U. S. Treasury.
5. All documents that reflect the total amount of dollars collected from participants in the 2011 OVDI that were deposited in any other agency or department account, and specifically identify the agency/department and the total amount received by each.
6. Copies of all Form 906 closing agreements executed pursuant to the 2011 OVDI, excising names, addresses, social security numbers and any other information identifying the taxpayer executing said agreement.

One page was located in response to Items #1 – 5 and I am withholding it in full for the following reasons:

FOIA exemption (b)(7)(A) exempts from disclosure records or information compiled for law enforcement purposes, but only to the extent that production of such records could interfere with enforcement proceedings.

Disclosure of this information is also exempt under FOIA subsection (b)(3) supported by Internal Revenue Code section IRC Section 6103(e)(7), because release would impair federal tax administration.

FOIA exemption (b)(7)(E) exempts from disclosure records or information compiled for law enforcement purposes to the extent their production would reveal:

- Techniques and procedures for law enforcement investigations or prosecutions
- Guidelines for law enforcement investigations or prosecutions, if release could reasonably be expected to risk circumvention of the law.

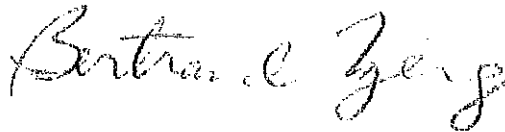
In response to Item #6, this information is being withheld in full for the following reason:

FOIA exemption (b)(3), requires us to withhold information that is specifically exempted from disclosure by another law. Without proper authorization or a valid Power of Attorney, law prohibits us from making return information of another taxpayer public. The law supporting this exemption is Title 26 United States Code section 6103(a).

This constitutes a full denial of your request. I have enclosed Notice 393 explaining your appeal rights.

If you have any questions please call Tax Law Specialist Janice P. Rudolph, ID # 0218169, at (202) 283-7388 or write to: Internal Revenue Service, Headquarters (HQ) FOIA, Mail Stop C2-235, 5000 Ellin Road, Lanham, MD 20906. Please refer to case number F13285-0027.

Sincerely,



Bertrand Tzeng  
Disclosure Manager (Acting)  
HQ Disclosure Program Operations and FOIA

Enclosure  
Notice 393

## **ATTACHMENT C**

IRS Says Offshore Effort Tops \$5 Billion, Announces New Details on the Voluntary Disc... Page 1 of 1



**IRS Says Offshore Effort Tops \$5 Billion,  
Announces New Details on the Voluntary Disclosure  
Program and Closing of Offshore Loophole**

Español

IR-2012-84, June 28, 2012

WASHINGTON — The Internal Revenue Service today announced that its offshore voluntary disclosure programs have exceeded the \$5 billion mark and released new details regarding the voluntary disclosure program announced in January, including tightening the eligibility requirements.

"We continue to make strong progress in our international compliance efforts that help ensure honest taxpayers are not footing the bill for those hiding assets offshore," said IRS Commissioner Doug Shulman. "People are finding it tougher and tougher to keep their assets hidden in offshore accounts."

Shulman said the IRS offshore voluntary disclosure programs have so far resulted in the collection of more than \$5 billion in back taxes, interest and penalties from 33,000 voluntary disclosures made under the first two programs. In addition, another 1,500 disclosures have been made under the new program announced in January.

The voluntary disclosure programs are part of a wider effort by the IRS to stop offshore tax evasion and ensure tax compliance. This includes beefed up enforcement, criminal prosecution and implementation of third-party reporting through the Foreign Account Tax Compliance Act (FATCA).

The IRS also closed a loophole that's been used by some taxpayers with offshore accounts. Under existing law, if a taxpayer challenges in a foreign court the disclosure of tax information by that government, the taxpayer is required to notify the U.S. Justice Department of the appeal.

The IRS said that if the taxpayer fails to comply with this law and does not notify the U.S. Justice Department of the foreign appeal, the taxpayer will no longer be eligible for the Offshore Voluntary Disclosure Program (OVDP). The IRS also put taxpayers on notice that their eligibility for OVDP could be terminated once the U.S. government has taken action in connection with their specific financial institution.

Additional details of these eligibility issues are available in a new set of questions and answers released today on the current OVDP, which was announced in January (see IR-2012-5). The IRS reopened the OVDP following continued strong interest from taxpayers and tax practitioners after the closure of the 2011 and 2009 programs.

This program — which helps bring people back into the tax system — will be open for an indefinite period until otherwise announced. The program is similar to the 2011 program in many ways, but with a few key differences. Unlike last year, there is no set deadline for people to apply. However, the terms of the program could change at any time going forward.

Under the current OVDP, the offshore penalty has been raised to 27.5 percent from 25 percent in the 2011 program. The reduced penalty categories of 5 percent and 12.5 percent are still available.

The IRS also announced a plan to help U.S. citizens residing overseas to catch up with tax filing obligations and assistance for people with foreign retirement plan issues. See IR-2012-65 for more.

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INTERNAL REVENUE SERVICE

# IRS



## News Release

Media Relations Office

Washington, D.C.

Media Contact: 202.622.4000

[www.irs.gov/newsroom](http://www.irs.gov/newsroom)

Public Contact: 800.829.1040

### **IRS Offshore Programs Produce \$4.4 Billion to Date for Nation's Taxpayers; Offshore Voluntary Disclosure Program Reopens**

IR-2012-5, Jan. 9, 2012

WASHINGTON — The Internal Revenue Service today reopened the offshore voluntary disclosure program to help people hiding offshore accounts get current with their taxes and announced the collection of more than \$4.4 billion so far from the two previous international programs.

The IRS reopened the Offshore Voluntary Disclosure Program (OVDP) following continued strong interest from taxpayers and tax practitioners after the closure of the 2011 and 2009 programs. The third offshore program comes as the IRS continues working on a wide range of international tax issues and follows ongoing efforts with the Justice Department to pursue criminal prosecution of international tax evasion. This program will be open for an indefinite period until otherwise announced.

"Our focus on offshore tax evasion continues to produce strong, substantial results for the nation's taxpayers," said IRS Commissioner Doug Shulman. "We have billions of dollars in hand from our previous efforts, and we have more people wanting to come in and get right with the government. This new program makes good sense for taxpayers still hiding assets overseas and for the nation's tax system."

The program is similar to the 2011 program in many ways, but with a few key differences. Unlike last year, there is no set deadline for people to apply. However, the terms of the program could change at any time going forward. For example, the IRS may increase penalties in the program for all or some taxpayers or defined classes of taxpayers – or decide to end the program entirely at any point.

"As we've said all along, people need to come in and get right with us before we find you," Shulman said. "We are following more leads and the risk for people who do not come in continues to increase."

The third offshore effort comes as Shulman also announced today the IRS has collected \$3.4 billion so far from people who participated in the 2009 offshore program, reflecting closures of about 95 percent of the cases from the 2009 program. On top of that, the IRS has collected an additional \$1 billion from up front payments required under the 2011 program. That number will grow as the IRS processes the 2011 cases.

In all, the IRS has seen 33,000 voluntary disclosures from the 2009 and 2011 offshore initiatives. Since the 2011 program closed last September, hundreds of taxpayers have come forward to make voluntary disclosures. Those who have come in since the 2011 program closed last year will be able to be treated under the provisions of the new OVDP program.

The overall penalty structure for the new program is the same for 2011, except for taxpayers in the highest penalty category.

For the new program, the penalty framework requires individuals to pay a penalty of 27.5 percent of the highest aggregate balance in foreign bank accounts/entities or value of foreign assets during the eight full tax years prior to the disclosure. That is up from 25 percent in the 2011 program. Some taxpayers will be eligible for 5 or 12.5 percent penalties; these remain the same in the new program as in 2011.

Participants must file all original and amended tax returns and include payment for back-taxes and interest for up to eight years as well as paying accuracy-related and/or delinquency penalties.

Participants face a 27.5 percent penalty, but taxpayers in limited situations can qualify for a 5 percent penalty. Smaller offshore accounts will face a 12.5 percent penalty. People whose offshore accounts or assets did not surpass \$75,000 in any calendar year covered by the new OVDP will qualify for this lower rate. As under the prior programs, taxpayers who feel that the penalty is disproportionate may opt instead to be examined.

The IRS recognizes that its success in offshore enforcement and in the disclosure programs has raised awareness related to tax filing obligations. This includes awareness by dual citizens and others who may be delinquent in filing, but owe no U.S. tax. The IRS is currently developing procedures by which these taxpayers may come into compliance with U.S. tax law. The IRS is also committed to educating all taxpayers so that they understand their U.S. tax responsibilities.

More details will be available within the next month on IRS.gov. In addition, the IRS will be updating key Frequently Asked Questions and providing additional specifics on the offshore program.



## IRS Commissioner Doug Shulman's Statement on the 2011 Offshore Voluntary Disclosure Initiative

Feb. 8, 2011

Today, we are announcing the details of a new voluntary disclosure program that's designed to get people hiding assets offshore back into the U.S. tax system.

As we continue to amass more information and pursue more people internationally, the risk to individuals hiding assets offshore is clearly increasing. This new effort gives those hiding money in foreign accounts a tough, fair way to resolve their tax problems — once and for all. It gives people a chance to come in before we find them.

Some people may wonder why we're offering another voluntary disclosure program after we ended the last one in October 2009. Let me explain why. Our primary goal is to have long-term voluntary compliance with our nation's tax laws. We owe that to the honest Americans who pay their taxes every year. After our last program closed in October 2009, we have continued to see interest from people looking for a way to get back into the tax system.

In our 2009 program, we had 15,000 disclosures from around the world. Since the program ended, we've had more than 3,000 taxpayers come in through our 'regular' voluntary disclosure program. And we believe there are more people out there who will come in if we provide certainty with regard to their treatment.

So we are opening up a new program. This one is called the 2011 Offshore Voluntary Disclosure Initiative, or our shorthand is "OVDI."

The new initiative differs in critical ways from the 2009 program. We learned a lot from our last effort, and we are incorporating this learning into the 2011 initiative.

Before I outline the basic structure of the initiative, let me make clear that people who waited out the 2009 initiative will not be rewarded for waiting. Make no mistake, this program contains a tough set of guidelines.

Let me outline the key terms of the initiative:

First, participants must pay back-taxes and interest for up to eight years. And they have to pay accuracy-related and / or delinquency penalties.

In addition to back taxes, interest, and regular penalties, the new penalty framework also generally requires people to pay a penalty of 25 percent of the amount in the foreign bank accounts. That penalty applies to the year with the highest aggregate account balance between 2003 and 2010. For comparison, the highest penalty rate in the 2009 program was set at 20 percent, and the new initiative is set at 25 percent.

Similar to the 2009 initiative, taxpayers can qualify for a 5 percent of account balance penalty in limited situations.

For the 2011 initiative, there's also a new penalty category of 12.5 percent for smaller offshore accounts. People whose accounts or assets were under \$75,000 will qualify for this lower rate.

For those hiding assets offshore, there is an obvious reason to come in now. If we find you, you face harsher penalties and the possibility of jail time. If you come in voluntarily, you pay a steep price but avoid going to jail.

And I offer a word of advice to procrastinators. The deadline for this program is Aug. 31. But the deadline means a different thing for the 2011 initiative than it did for the 2009 initiative. You will need to provide all of your paperwork by Aug. 31. You can't have a sudden revelation on the morning of Aug. 31 and jump into this program in the final hours.

The Aug. 31 deadline means that you need to have filed everything by then. You need your tax returns, your paperwork — and you need to write a check by that time to the U.S. Treasury. So people should start now — not in August.

We have been getting better and better at detecting offshore accounts—therefore the risk of being caught is increasing. We now have a number of other banks under investigation, based on information we received from our first round of disclosures and from other sources. Tax secrecy continues to erode. And starting in a couple of years, new laws will come into effect that will give us more information than ever on offshore holdings. As I've made clear throughout my tenure as IRS Commissioner, we are not letting up on pursuing offshore tax evasion, and there's going to continue to be more in the works.

For those hiding cash or assets offshore, the time to come in is now. The risk of being caught will only increase.

## HODGEN LAW INTERNATIONAL TAX

### Archive for 'Tax bureaucracy'

### If by “entice” you mean “submit and be assimilated” then yes

by Phil Hodgen on January 24th, 2011

We know it is coming. A new amnesty.

(Aside. The IRS people aren't supposed to use the word “amnesty” in describing the Offshore Voluntary Disclosure Program. Just like they're not allowed to use the words “tax protestor.”)

In the Jan. 24, 2011 edition of Tax Notes Today, 2011 TNT 15-1, there is a report from the ABA Tax Section meeting in Florida.

Steven Miller, IRS deputy commissioner for services and enforcement, gave what are called “wide-ranging luncheon remarks.” FTFA:

The IRS is close to announcing the details of a follow-up initiative to **entice** more taxpayers with unreported offshore accounts to voluntarily disclose them to the IRS, Steven Miller, IRS deputy commissioner for services and enforcement, said January 21.

Miller said the new offshore disclosure initiative will not offer terms as generous as those available to taxpayers who participated in the special offshore disclosure program established in 2009, but the structure will be somewhat similar. The IRS intends to use the lessons learned in processing the first batch of offshore cases to guide its new approach, which will include greater centralization, he said.

Significantly, the IRS will allow taxpayers who have made voluntary disclosures since the last special program ended to avail themselves of the terms in the new initiative, Miller said. The IRS's belief in allowing taxpayers to make voluntary disclosures should be read in the context of the agency's continued enforcement efforts, he said. The possibility of a second offshore



voluntary disclosure program was first raised by IRS Commissioner Douglas Shulman in December.

The IRS received about 15,000 disclosures during the first offshore voluntary compliance program, Miller noted. Since the program expired in October 2009, the agency has received about 3,000 more. Most of the cases have involved previously unpaid taxes, with the average being around \$200,000 per case, he said.